In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-673v

Filed: November 19, 2012

**********	NOT TO BE PUBLISHED
CLARENCE MANTLO, *	
*	Special Master Zane
Petitioner, *	
*	Ruling on the Record; Trivalent
v. *	Influenza (flu) Vaccine; Insufficient
*	Proof of Causation
SECRETARY OF HEALTH *	
AND HUMAN SERVICES, *	
*	
Respondent. *	
*	
**********	

Isaiah R. Kalinowski, Maglio Christopher and Toale, PA, Sarasota, FL, for Petitioner
Melonie J. McCall, United States Dep't of Justice, Washington, DC, for Respondent

UNPUBLISHED DECISION DISMISSING CASE[1]

On October 13, 2011, Clarence Mantlo ("Petitioner") filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986 ("the Vaccine Act"), 42 U.S.C. § 300a-10, *et seq*., as amended. Petitioner alleged that he suffered from Guillain-Barré Syndrome ("GBS") and its sequelae as a result of receipt of two trivalent influenza ("flu") vaccinations. Petition at ¶ 10. Petitioner alleged that he received the first flu vaccination "[e]arly in the month of October, 2010 … at his workplace at American Paper and Twine …," Petition at ¶ 2, and that he received the second flu vaccination on or about October 1, 2011. Petition at ¶ 4. For the reasons set forth below, the undersigned finds that Petitioner is not entitled to compensation and

[1] Because this decision contains a reasoned explanation for the Special Master's action in this case, the Special Master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002 § 205, 44 U.S.C. § 3501 (2006). All decisions of the Special Master will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the Special Master, upon review, agrees that the identified material fits within the banned categories listed above, the Special Master shall delete such material from public access. 42 U.S.C. § 300aa-12 (d)(4); Vaccine Rule 18(b).

dismisses his case.

I. BACKGROUND

Subsequent to the filing of his claim, on August 3, 2012, Petitioner filed a Statement of Completion acknowledging that he has filed all medical records and fact witness affidavits pertaining to his Petition that are available. Motion for Decision at ¶ 1.

Those records show that Petitioner did not receive a flu vaccination in 2010. On June 25, 2012, Petitioner filed a letter from his employer, American Paper & Twine Co., in which the Chief Financial Officer stated the company offered "flu shots to our employees in the fall of 2010," but "Mr. Mantlo did not volunteer to take the flu shot …." Pet'r Ex. 15 at 1. Indeed, in his Statement of Completion, Petitioner acknowledged that it did not appear that he had been "administered a vaccination in late 2010 through his place of employment." Statement of Completion, Aug. 3, 2012.

Moreover, the records also indicate that the onset of the symptoms which Petitioner suffered in October 2011 that eventually led to his diagnosis of Guillain-Barre syndrome, *see* Pet'r Ex. 6 at 11, began on or before October 3, 2011. The records indicate that Petitioner went to the hospital on October 3, 2011 complaining of extreme pain all over, frequent falls, weakness, and loss of appetite. Pet'r Ex. 6 at 4. The records also indicate that in an earlier examination on October 1, 2011, Petitioner reported that the onset of his symptoms had begun a week earlier. Pet'r Ex. 1 at 4. But, significantly, the records also show that it was not until October 4, 2011, while an inpatient at Baptist Hospital, that he received an influenza vaccination. Pet'r Ex. 6 at 6, 18.

On September 7, 2012, Petitioner filed a Motion for Decision on the Written Record ("Motion for Decision"), in which he acknowledged that it does not appear likely he would be able to prove vaccine causation of the injury alleged, and concluded he did not deem it worthwhile to prosecute his petition. Motion for Decision at ¶¶ 2-3. Respondent did not file a response to Petitioner's motion. This matter is now ready for decision.

Having considered Petitioner's motion, the undersigned hereby grants Petitioner's motion for a ruling on the record and enters this ruling based upon the entire record. Vaccine Rule 8(d).

II. DISCUSSION

To be awarded compensation under the Vaccine Act, a petitioner must prove either: 1) that he suffered a "Table Injury," *i.e.*, an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of his medical problems were actually caused or significantly aggravated by the vaccination(s) at issue. *See* 42 U.S.C. §§ 300aa-11(c)(1) and 300aa-13(a)(1)(A).

Actual causation must be proved by preponderant evidence demonstrating that the subject vaccination caused the petitioner's injury by showing: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship

between vaccination and injury." *Althen v. Sec'y of Health & Human Servs*., 418 F.3d 1274, 1278 (Fed. Cir. 2005). The logical sequence of cause and effect must be supported by "reputable medical or scientific explanation." *Id., quoting Grant v. Sec'y of Health & Human Servs.,* 956 F.2d 1144, 1148 (Fed. Cir. 1992). A petitioner may not be awarded compensation based on petitioner's claims alone. 42 U.S.C. § 300aa-13(a)(1). Rather, the petition must be supported by either medical records or by the opinion of a competent physician. *Id.*

An examination of the record demonstrates that it does not contain medical records or a medical opinion sufficient to demonstrate that Petitioner was injured by an influenza vaccination. First, there is no "Table Injury" associated with the Trivalent influenza vaccine, 42 C.F.R. § 100.3(a) (2011), and Petitioner did not claim to have suffered a "Table Injury."

Second, Petitioner has not proved that his injuries were caused in-fact by his receipt of the flu vaccination. The medical records do not indicate that Petitioner received any influenza vaccination prior to the onset of his injury. Specifically, the record indicates that Petitioner did not receive an influenza vaccination in 2010. Additionally, the onset of Petitioner's alleged injuries first occurred when Petitioner sought admission to Baptist Hospital on October 3, 2011, prior to his receiving a flu vaccination on October 4, 2011. Moreover, none of Petitioner's treating physicians opined that his injuries were caused or significantly aggravated by the flu vaccination he received. *See* Exs. 1-15. Finally, Petitioner has not submitted an expert report and, by filing this Motion for Decision on the Written Record, has indicated that he will not submit an expert report supporting his claim that the flu vaccination caused his injuries.

Based on the review of the record as a whole, Petitioner has failed to prove by preponderant evidence that he suffered a "Table Injury" or that his condition was "actually caused" by his flu vaccination.

Petitioner's claim for compensation is DENIED, and this case is DISMISSED for insufficient proof. In the absence of a motion for review, the Clerk of the Court is directed to enter judgment accordingly.[2]

IT IS SO ORDERED.

/s/ Daria J. Zane
Daria J. Zane
Special Master

[2] This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.